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RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Commission on Human Rights the present note on the technical meeting of experts on minorities which took place at Geneva from 2 to 4 February 1993.

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1. By its resolution 1991/22 entitled "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities", of 28 August 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to prepare with the cooperation of the Special Rapporteur, a technical meeting of experts on minorities. By its decision 1992/112, the Commission on Human Rights approved the Sub-Commission's request and, by its decision 1992/254 the Economic and Social Council endorsed the approval by the Commission.

2. The Special Rapporteur, Mr. Asbjorn Eide, was appointed by the Sub-Commission in 1989 with a mandate to undertake a study on national experiences regarding the peaceful and constructive solutions of problems involving minorities. As requested by the Sub-Commission, the Special Rapporteur has so far submitted a preliminary report in 1990 and two progress reports in 1991 and 1992 respectively. The Special Rapporteur will submit his final report to the Sub-Commission at its forty-fifth session in August 1993.

3. In accordance with Sub-Commission resolution 1991/22, the meeting was convened at Geneva from 2 to 4 February 1993. The meeting was attended by leading experts on minorities from different regions of the world selected by the Special Rapporteur and invited accordingly by the Centre for Human Rights. In addition, the meeting was attended by the representatives of some specialized agencies, intergovernmental organizations and non-governmental organizations having competence in the field of minorities, as well as representatives from Governments.

4. Upon invitation by the Special Rapporteur, the meeting was addressed by the newly appointed High Commissioner for National Minorities of the Conference on Security and Cooperation in Europe, Mr. Max van der Stoel.

5. The purpose of the meeting was to provide an opportunity for the six experts to exchange views on the progress reports of the Special Rapporteur and to supply him with a useful basis for guidance in the finalization of his final report.

6. Some of the observations made and ideas expressed may be of use also for the Commission on Human Rights at its forty-ninth session. It was not the purpose of the meeting to draft conclusions and recommendations, and the following elements do not necessarily reflect the views of all experts or observers. The views expressed, however, may be useful for the debate on the implementation of the provisions of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the General Assembly in its resolution 47/135 of 18 December 1992.

7. The meeting focused mainly on the experiences in different parts of the world regarding minority treatment with the aim of finding peaceful and constructive ways of solving conflicts in which minorities are involved. The meeting touched briefly on the need for elaboration of international mechanisms in this field.

8. Participants endorsed the concerns expressed by the Secretary-General in the "Agenda for Peace" (A/47/277 and S/24111, para. 17), where it is stated:

"The time of absolute and exclusive sovereignty ... has passed; its theory was never matched by reality. ... Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve."

9. Participants noted the serious destabilizing effects of contemporary ethno-nationalist revivalism, which increase the difficulties facing minorities. The need for protection of minority rights appears to be more evident than ever, especially considering recent outbreaks of violence and even civil war, which may be directly attributable to ethnic or religious conflict.

10. One cause of the aggravated ethnic conflicts today is to be found in the breakdown of some multi-ethnic federations and the disintegration of the balance between different ethnic groups prevailing under those federal systems. The new political situations, while opening up for new democratic opportunities, have also been used in some places for irresponsible ethnic policies leading to an escalation of violence and counter violence. The parties to such conflicts eventually become helpless prisoners of their own violence, and depend on the international community to restore law and order.

11. It was observed that in times of vast political and institutional changes, pre-existing arrangements applying to nationalities and minorities, such as autonomy structures, should not be immediately demolished even if incompatible with the new structures, but that a transition period should be provided for in order to adopt confidence-building measures by which the groups concerned can adapt to the new situation without loss of identity or acquired rights.

12. Participants noted the serious consequences of the uncontrolled supply and trade of arms to groups in conflict, and urged that mechanisms be found to prevent such a flow. In some circumstances this may have to be combined with international peace enforcement to restore law and order when situations of ethnic conflict have degenerated into anarchy.

13. Participants discussed at length the problem of citizenship legislation at times of independence or restored independence, and noted that serious minority issues could arise from defective citizenship legislation. It was therefore argued that international standards should be adopted in this field.

14. It was further observed that for the maintenance of international peace it is essential to preserve, wherever possible, the national unity and territorial integrity of States, or the borders of union republics in case of dissolution of federations. The protection of minority rights must therefore be pursued in such a way that territorial integrity is not endangered, except in extreme situations where no other possibility exists to preserve the existence and identity of the group concerned.

15. The participants welcomed the adoption of the Declaration on the Rights of National or Ethnic Persons Belonging to Religious and Linguistic Minorities and expressed their hope that its provision would be used more and more as a point of reference in the international human rights bodies and cited in

national and international court decisions. Appropriate protection of minority rights can be a constructive alternative to the much more dangerous drifts towards secessionism.

16. Domestic recourse procedures available to members of minorities are essential in order to avoid escalation of group conflicts. It would be useful that the provisions of the Declaration be made part of municipal law and used as a reference for domestic courts, for conciliation committees, or similar institutions and ombudsmen.

17. It was noted that no definition of minorities was contained in the Declaration. Participants doubted the necessity or usefulness of a definition. It had been an obstacle in the past to believe that a common definition and a common set of rights should apply to all minorities.

18. It was suggested that a more practical approach should be found. The emphasis should be on a proper analysis of the particular problem faced by the minority in a given situation, and to find a solution to that problem in conformity with international law in general and human rights instruments in particular. This should also guide the efforts to implement the new Declaration.

19. It was also observed that each individual has the right to identify himself or herself with a group of persons differing from the rest of society with distinct socio-cultural, religious, linguistic or ethnic character, and also that no person shall be obliged to identify himself or herself with any particular group.

20. It was pointed out that group rights can be accommodated in full respect of the territorial integrity of States, provided the parties make use of the wide range of options which can be derived from State practice in different parts of the world. The foundation should be in strict compliance with the principles of non-discrimination and equal political participation. Pluralism within multi-ethnic or multi-religious States can be safeguarded within a democratic framework based on rule of law guaranteeing the full respect for human rights and fundamental freedoms for all, through the implementation of legal rules that place effective restraints on the abuse of governmental power.

21. To achieve this, confidence-building may have to be adopted and broadly representative democratic systems be established where the different groups are given an effective voice in the management of affairs affecting them, and where conditions of social tolerance are promoted.

22. Participants reaffirmed that attention should be given to the serious problems faced by the Roma (gypsies) in many countries. Effective measures should be taken as soon as possible to achieve equality of opportunity between persons belonging to Roma and other residents.

23. Practices of ethnic cleansing was unreservedly condemned and participants emphasized that populations which had been forced to flee during periods of ethnic conflict should be entitled to return under conditions of safety. This must be an essential element in any peace plans relating to such conflicts.

24. The participants addressed the effects of earlier population transfers and generally of all State-sponsored mass population transfers. It was noted that these give rise to numerous human rights problems and negatively affect the situation of minorities. There is an urgent need to develop international standards and procedures regarding such transfers to deter them in general, to regulate them where they are permissible and to govern their consequences in a manner consistent with human rights norms.

25. Minority situations often give rise to bilateral tensions. Channels for responsible and constructive handling of disputes can sometimes be achieved through the adoption of bilateral arrangements, on a basis of reciprocity, between the two most directly concerned. The meeting was informed of current research on the content and effect of such bilateral arrangements and found it useful to explore this aspect further.

26. Issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State. The participants noted that international mechanisms would be required in order to give effect to the Declaration. Several suggestions were made in this direction.

27. Mechanisms which might be established either under the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights or other agencies or by the establishment of new offices, might include a working group on minorities similar to the Working Group on Indigenous Peoples or a Special Rapporteur:

(a) To facilitate communication between minorities and Governments;

(b) To develop methods for conflict prevention or of peaceful transformation of conflicts in which the groups concerned have a voice;

(c) To develop methods of human rights education both for majorities and minorities in the spirit of article 26, paragraph 2 of the Universal Declaration of Human Rights; article 13, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights and article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. Such education should include respect for minority and indigenous rights but also respect, by members of such groups, of the rights of all individuals belonging to other groups including the majority population.